No. 11113.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JACK EUGENE THOMSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF IN OPPOSITION TO PETITION FOR REHEARING.

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED.

Cases

Statutes

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The Petition for Rehearing should be denied for the following reasons:

I.

Appellant Did Not Exhaust His Administrative Remedies and Therefore the Decision of This Court Should Not Be Disturbed.

The opinion of this Court rendered April 30, 1947 is a complete answer to the Petition for Rehearing, except that appellant now seeks to go one step further back and to repudiate the express provisions of the law and the judicial interpretations thereof by quoting selected excerpts from statements of individual Senators during the discussions preceding an amendment to the Selective Service Law in Congress.

The section referred to in the Petition (50 U. S. C. A., App., §304a) is not applicable to selectees generally, but only to the one very special and narrow category of registrants described in the first paragraph of the section. The Petition for Rehearing neglects to quote this portion of the section. The provisions quoted expressly refer only to those registrants to whom it appears that their induction will shortly occur and who *request* to be ordered to a regularly established induction station for a pre-induction physical examination. The special nature of this section and its definite limitations are re-emphasized in the first sentence of the second paragraph (which was also omitted from the Petition) which reads, in part:

> "The commanding officer of such induction station where *such* physical examination is conducted *under this provision* shall issue to the registrant a certificate . . ."

Finally, the very sentence quoted by the appellant in his Petition again emphasizes the special nature of the procedure in the following manner:

> "Those registrants who are classified 1-A at the time of *such* physical examination . . ."

Thus it is apparent that the provisions of Section 304a are expressly limited to this very special situation, namely, where the registrant who feels that his induction will shortly occur *requests* an immediate pre-induction examination. Obviously, then, this section is not applicable in this case and hence affords no basis for disturbing the decision heretofore rendered.

Appellant's contentions in his Petition for Rehearing are not new, however. They are the same arguments

which were advanced by the appellants in *United States v. Flakowicz*, 146 F. (2d) 874 (C. C. A. 2d, 1945); cert. den. 325 U. S. 851, 65 S. Ct. 1086, 89 L. Ed. 1971 (1945), and *United States v. Rinko*, 147 F. (2d) 1 (C. C. A. 7th, 1945); cert. den. 325 U. S. 851, 65 S. Ct. 1086, 89 L. Ed. 1971 (1945), and which were rejected by the Seventh and Second Circuits, following which certiorari was denied by the Supreme Court. In both cases, as in this one, the appellants relied heavily upon *Billings v. Truesdell*, 321 U. S. 542, 64 S. Ct. 737, 88 L. Ed. 917 (1944).

Appellant again seeks to distinguish the decision of the United States Supreme Court in *Balogh v. United States*, 91 L. Ed. (Adv. Op.) 428 (1947). To avoid lengthy repetition here, reference is made to Appellee's Supplemental Brief [pp. 2-7] wherein an analysis of the holding of the *Balogh* decision is made by setting forth the issues which were before the Supreme Court, as they appear in the Government's Petition for the Writ of Certiorari.

Conclusion.

The contentions of the appellant are therefore without merit and the Petition for Rehearing should be denied.

Respectfully submitted,

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